UNITED	SI	TATES	DIST	ric	CT C	OURT
SOUTHER	RN	DIST	RICT	OF	NEW	YORK

WILLIAM FIGUEROA,

Petitioner,

20-cv-3013 (JGK)

- against -

ORDER

KEYSER,

Respondent.

JOHN G. KOELTL, District Judge:

The Court has received the attached letter from the petitioner. The petitioner apparently asks for discovery in connection with his prior criminal convictions. The petitioner has not yet exhausted his state court remedies in connection with his current application before this court. Any request for discovery should be directed to the state court. To obtain discovery in connection with his federal habeas petition, the petitioner would need to show good cause, which he has not yet shown.

SO ORDERED.

Dated: New York, New York

February 22, 2021

/s/ John G. Koeltl

John G. Koeltl

United States District Judge

Mr. William Figueroa-91-A-2142 Sullivan Correctional Facility P.O. Box 116 Fallsburg, New York

February 16, 2021

Hon. John G. Koeltl United States District Judge Daniel Patrick Moynihan United State Courthouse 500 Pearl Street New York, New York 10007

Re: Figueroa v. Keyser, No. 20 Civ. 3013 (JGK) (RWL)

Your Honor:

PLEASE TAKE NOTICE, I William Figueroa, petitioner, duly sworn, pursuant to Title 28 U.S.C. 1746, I am writing to this Court requesting that it intervene on my behalf a basis of sealed minutes of the ex parte discussion between Justice Michael L. Pesce and the trial prosecutor, Marianne Crosley's Esq., "repeated private access" concerning pretrial disclosure of a copy of the June 5, 1990 conference minutes, which the prosecution sent to the trial court's, is now a part of the record, and the non-disclosed DD-5 report numbered 176 and 197, there is no affirmation (either direct or implied) made by me or counsel that he knowingly, intelligently and voluntary waived his right to be present during the in-camera proceeding.¹

The Supreme Court has held that the "Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense." Nevada v. Jackson, 569 U.S. 505,509 (2013). The reports does not support this assertion, petitioner is not in position to carry out his own investigation to substantive his allegation. These reports are not just Brady² there are clear evidence of petitioner's "Actual Innocent." As the Supreme Court directed in the case of In Re Davis, this Court "should receive testimony and made finding of fact" because Mr. Figueroa has made a credible claim of actual innocence. 557 U.S. 952 (2009).³

The Kings County District Attorney Office, when routinely violated defendant's due process rights under Brady/Giglio which state that statutes of limitation often prevent defendant has a constitutional right to present evidence before the jury as to the circumstance under which

¹ Petitioner incorporates by reference the prior contention in his opposition to respondent's letter dated February 3, 2021 pursuant to this Court's January 27 Order (ECF #34).

² See Brady v. Maryland, 373 U.S. 83 (1963).

³ Even if defense counsel had known of the hearing in the Eddie Garcia statement that contained the real perpetrator name and statements he did not know that any such evidence or information was favorable to his client, but the prosecution did. It is obvious that the People are still attempting to hide Brady material from petitioner

his trial attorney were prohibited from reviewing and/or possessing what was or has known to the District Attorney's Officer, to be <u>inter alia</u>" police report 176 & 197 until 2018, when they finally respondent to defendant January 23, 2018 motion to renew he August 23, 1991 motion to vacate the judgment of conviction, pursuant to C.P.L. §440.10.⁴ For the least 32 years, spanning from 1990 and 2021 the petitioner sough production of the still missing DD-5 reports 176 & 197.

At the very least, seven days after the shooting, Eddie Garcia identified Manuel Rivera at a police interview by P.O. Rosario in which stated for the second time he had killed Maria Hernandez. When these two DD-5 reports numbered 160 and 202 relating to Eddie Garcia is crucial important to the defense which was made so late as to prevent the defense from using the material effectively in preparing or presenting its case. This may explain the serious improprieties in the People which have obviously conceded that the trial prosecutor violated its disclosure obligation by delaying unit the eve of trial the disclosure of DD-5 reports numbered 160 and 202, which relate to the admission of Eddie Garcia.

Wherefore, this Honorable Court is respectfully urged to order the Assistant Attorney General to produce the requested examination the still missing DD-5 reports 176 & 197, in all respect.⁷

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William Figueroa

CC: Mr. Mathew Keller Assistant Attorney General 28 Liberty Street New York, New York 10005 (212) 416-6072

⁴ The prosecution has failed to disclose missing DD-5 reports 176 & 197. This is an unfortunate example of former District Attorney Charles Hynes policy and practice of encouraging prosecutors to hold back exculpatory or impeaching evidence from petitioner in order to an advantage in a criminal prosecution. This is particularly true in light of the paucity of new discovered evidence or prosecutorial misconduct, can come in light.

⁵⁵ See <u>Scrimo v. Lee</u>, 935 F.3d 103(2d Cir. 2019) (holding that the state trial's exclusion of witness testimony as extrinsic evince on collateral matter, a discretionary rule, was an unreasonable application of <u>Crane v. Kentucky</u>, 106 S.Ct. 2142 and <u>Chambers v. Mississippi</u>, 93 S. Ct. 1038).

⁶ See Exhibit A.

⁷ Based on <u>Garcia v. Herbert</u>, 2018 WL 6272778, at *2 (E.D.N.Y. 2018) decision Judge Weinstein, Senior United States District Judge noted that: "[I]t [is] the duty of every judge and every court to examine its own decisions, and the decision of other courts without fear and to revise them without reluctance." <u>Baker v. Lorillard</u>, 4 NY 257, 261 (1850).

EXHIBIT A

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